

REMARKS

Claims 1-19 are currently pending in this application. In the Office Action mailed September 19, 2005 (the "Office Action"), claims 2, 5-8, 11-14, 16 and 19 were objected to but deemed allowable if rewritten to overcome the objections and claims 1, 3, 9-10, 15 and 17-18 were rejected. Claims 1, 2, 5, 15 and 16 have been amended through this submission. Applicant respectfully requests favorable consideration of the present application in light of the amendments to the claims and the following remarks.

On page 2 of the Office Action, claims 1, 3, 9-10, 15 and 17-18 were rejected under 35 USC 102(b) as being anticipated by US Patent No. 5,928,139 to Koros ("Koros"). Applicants respectfully traverse this rejection as follows.

In order for a reference to anticipate the present claimed invention under 35 USC 102(b), it must be shown that each and every element of the claim can be found in the reference. If it can be shown that one element of the claim is missing or not met by the cited reference, the rejection must be withdrawn as inappropriate.

Claim 1, as amended, is directed at a system for accessing a surgical target site, including an initial distraction system for distracting tissue in between an incision point and a surgical target site to create an initial distraction corridor. The system also includes an assembly capable of distracting the tissue from said initial distraction corridor to a secondary distraction corridor and thereafter sequentially receiving a plurality of retractor blades for retracting the tissue from

said secondary distraction corridor to thereby create an operative corridor to the surgical target site.

Claim 15, as amended, is directed at a method of accessing a surgical target site, comprising the steps of: (a) creating an initial distraction corridor through tissue extending between an incision point and a surgical target site; (b) distracting the tissue from said initial distraction corridor to a secondary distraction corridor; and (c) sequentially introducing a plurality of retractor blades for retracting the tissue from said secondary distraction corridor to create an operative corridor to the surgical target site.

The Koros reference fails to disclose each and every element of the claimed invention as set forth in amended Claims 1 and 15. In particular, Koros fails to disclose the claimed feature of an initial distraction system for distracting *tissue* in between an incision point and a surgical target site to create an initial distraction corridor (of Claim 1) and the claimed feature of creating an initial distraction corridor through *tissue* extending between an incision point and a surgical target site (of Claim 15). While Koros does discuss distraction and retraction, a close reading reveals that the distraction of Koros is actually for distracting the *vertebral bodies* as opposed to the tissue extending between an incision point and the surgical target site as with the present invention. This is evident with reference to FIG. 4 of Koros, wherein the retractor blades 30 are disposed on lateral sides of the spinal target site and the distractor blades 32 are coupled to the superior and inferior vertebral bodies. As described in Col. 2 line 65 – Col. 3 line 1, “the distractor includes fixation screws to allow adjacent vertebrae to be spread by the distractor.” The initial distraction system of the present invention is to distract tissue (not adjacent vertebrae

of Koros) to create an initial distraction corridor extending between an incision point in the skin of the patient and the surgical target site.

Because Koros is silent to at least one element of amended Claims 1 and 15, it is respectfully requested that these rejections in the Office Action be withdrawn. Claims 1 and 15 are believed to be in proper condition for allowance and a determination of such is hereby respectfully requested. Claims 3, 4, 9, 10, being dependent upon and further limiting independent Claim 1, should be allowable for the reasons set forth in support of the allowability of Claim 1, as well as the additional features they contain. Claims 17-19, being dependent upon and further limiting independent Claim 15, should be allowable for the reasons set forth in support of the allowability of Claim 15, as well as the additional features they contain.

Applicants wish to thank the Examiner for the indication of allowability with respect to claims 2, 5-8, 11-14, 16 and 19. Applicants have amended claims 2, 5 and 16 into independent form to overcome the objections as set forth in the Office Action. As such, Applicants now believe the claims 2, 5-8, 11-14, 16 and 19 are in condition for allowance.

PATENT

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CONCLUSION

The foregoing amendment has been submitted to place the present application in condition for allowance. Favorable reconsideration and allowance of the claims in this application is respectfully requested. In the event that there are any questions concerning this Amendment or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,
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